

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION NO.3362 of 2017

ORDER: (per SK,J)

The prayer of the petitioner in this case reads as under:

‘For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon’ble Court may be pleased to issue an order, direction particularly one in the nature of writ of mandamus or any other appropriate writ;

(i) declare the action of the respondent-Bank officials trying to enforce the security interest against the petitioner’s house bearing No.17-1-386/SN/5, Besides S.N.Reddy Gardens, Champapet, Hyderabad 500060 by invoking Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act 2002) as illegal, arbitrary and without jurisdiction; (ii) and consequently direct the respondent-Bank officials to restrain from invoking the SARFAESI Act, 2002 against the petitioner’s property; (iii) and pass such other order or orders may deem fit and proper in the circumstances of the case.’

According to the petitioner, the property in relation to which securitisation proceedings had been initiated by the UCO Bank was settled in her favour by her husband under a registered settlement deed executed on 04.11.2004. It is however conceded that the husband of the petitioner thereafter executed a family settlement deed in relation to the very same property and settled it upon their son. In turn, the son seems to have sold the said property to one Sripada Viswa Karma, who created a security interest therein in favour of UCO Bank.

The aforstated facts disclose the nature of the dispute that would arise for consideration. As to whether the petitioner has better title or whether the Bank can claim rights by virtue of the sale of the property in favour of its borrower, Sripada Viswa Karma, are contentious issues of fact which are not amenable to resolution in a writ petition. In the light of the law laid down by this Court in D.Ram Reddy v. M/s. Asset Reconstruction Company (India) Pvt. Ltd.¹, the statutory prohibition

¹ 2016 SCC Online Hyd 192

posited under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ousting the jurisdiction of the civil Court would not be attracted in a case of this nature.

Following the aforestated decision and in terms thereof, the writ petition is dismissed leaving it open to the petitioner to approach the competent civil Court for adjudication of the dispute. It would be open to her to seek appropriate interim relief from the civil Court. We make it clear that we have not ventured into the merits of the matter and all issues are left open for adjudication by the civil Court.

Pending miscellaneous petitions, if any, shall also stand dismissed.
No order as to costs.



SANJAY KUMAR,J

J.UMA DEVI,J

Date:06.12.2017

GJ